

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JERMAINE HICKLES,

Defendant.

CASE NO. CR18-0015-JCC

ORDER

This matter comes before the Court on Defendant Jermaine Hickles's emergency motion for compassionate release (Dkt. No. 74), Mr. Hickles's motion to seal (Dkt. No. 75), the Government's motion to file an overlength brief (Dkt. No. 83), the Government's motion to seal (Dkt. No. 85), and Mr. Hickles's motion to file an overlength brief (Dkt. No. 87). Having considered the parties' briefing and the relevant record, the Court hereby DENIES Mr. Hickles's motion for compassionate release (Dkt. No. 74), GRANTS in part and DENIES in part Mr. Hickles's motion to seal (Dkt. No. 75), GRANTS the Government's motion to file an overlength brief (Dkt. No. 83), GRANTS the Government's motion to seal (Dkt. No. 85), and GRANTS Mr. Hickles's motion to file an overlength brief (Dkt. No. 87).

I. BACKGROUND

On August 14, 2018, the Court sentenced Mr. Hickles to 84 months of incarceration followed by three years of supervised release for possession of methamphetamine with intent to

1 distribute, possession of a firearm in furtherance of a drug trafficking crime, and being a felon in
2 possession of a firearm. (Dkt. Nos. 35, 36 at 2.) Mr. Hickles is currently incarcerated at FCI
3 Sheridan. (Dkt. No. 74 at 4.)

4 On December 23, 2020, Mr. Hickles requested that the warden of FCI Sheridan file a
5 motion for compassionate release on his behalf. (Dkt. No. 74 at 3, 5.) The warden of FCI
6 Sheridan has yet to respond. (*Id.* at 3.) Even so, Mr. Hickles now asks the Court to release him
7 before he serves the remaining 33 months of his 84-month sentence because Mr. Hickles has
8 underlying health conditions that make him more likely to develop a severe case of COVID-19
9 and the conditions of confinement at federal facilities prevent effective control of COVID-19.
10 (*See* Dkt. No. 74 at 4, 16–23) (noting that Mr. Hickles’s projected release date is October 26,
11 2023).

12 **II. DISCUSSION**

13 **1. Motion for Compassionate Release**

14 The Court may reduce a term of imprisonment if “extraordinary and compelling reasons
15 warrant such a reduction,” “such a reduction is consistent with applicable policy statements
16 issued by the Sentencing Commission,” and the Court considers the 18 U.S.C. § 1335(a) factors.
17 18 U.S.C. § 3582(c)(1)(A)(i). But, as a threshold matter, a defendant must demonstrate that he
18 has satisfied the statute’s exhaustion requirement. *See* 18 U.S.C. § 3582(c)(1)(A). Namely, a
19 defendant must show that he exhausted administrative remedies or waited 30 days after filing a
20 request with the warden before filing the instant motion. *See id.* Mr. Hickles fails to make this
21 showing. (Dkt. No. 74 at 3, 5.)

22 Mr. Hickles acknowledges that 18 U.S.C. § 3582(c)(1)(A) requires him to wait 30 days to
23 file his motion, but he claims that the Court can and should waive that requirement because
24 waiting for the warden to respond would be futile and would result in irreparable harm. (*See* Dkt.
25 No. 74 at 5–12.) The Court previously determined that the statute’s 30-day waiting period is not
26 waivable. *See United States v. Pippin*, 2020 WL 2199573, slip op. at 1 (W.D. Wash. 2020);

1 *United States v. Dadi*, 2020 WL 5982007, slip op. at 1 (W.D. Wash. 2020). At least five Courts
 2 of Appeals have confirmed the Court’s interpretation. *See United States v. Raia*, 954 F.3d 594,
 3 597 (3d Cir. 2020); *United States v. Franco*, 973 F.3d 465, 468 (5th Cir. 2020); *United States v.*
 4 *Alam*, 960 F.3d 831, 833–35 (6th Cir. 2020); *United States v. Williams*, 829 F. App’x 138, 140
 5 (7th Cir. 2020); *United States v. Springer*, 820 F. App’x 788, 791–92 (10th Cir. 2020). Mr.
 6 Hickles does not cite any intervening authority that compels a different result. Therefore, the
 7 Court concludes it lacks authority to waive Mr. Hickles’s failure to satisfy Section
 8 3582(c)(1)(A)’s exhaustion requirement.¹

9 In his reply brief, Mr. Hickles requests that the Court renote his motion for
 10 compassionate release if it finds that his motion is premature. (Dkt. No. 88 at 5.) The Court
 11 DENIES this request because the argument was raised for the first time in reply, thereby
 12 preventing the Government from responding to it. *See Zamani v. Carnes*, 491 F.3d 990, 997 (9th
 13 Cir. 2007) (“The district court need not consider arguments raised for the first time in a reply
 14 brief.”). Moreover, even if Mr. Hickles raised his argument in his opening brief, 18 U.S.C.
 15 § 3582(c)(1)(A) precludes such an approach; it allows the Court to reduce a sentence “upon
 16 motion of the defendant” only if the motion is filed after the defendant has exhausted
 17 administrative remedies or “after . . . the lapse of 30 days from the receipt of such a request by
 18 the warden of the defendant’s facility.” *See Franco*, 973 F.3d at 467 (defendants must exhaust
 19 administrative remedies or “wait for thirty days after the warden’s receipt of the request before
 20 filing a motion in federal court”); *Alam*, 960 F.3d at 833–34 (defendants must exhaust
 21 administrative rights or wait 30 days “before they may move on their own behalf”).

22 **2. Motions to Seal and Motions to File Overlength Brief**

23 Mr. Hickles and the Government each move to maintain Mr. Hickles’s medical records

24 ¹ The Court need not decide whether 18 U.S.C. § 3582(c)(1)(A) is “jurisdictional.” Even if the
 25 statute is a “claims-processing rule,” as Mr. Hickles argues, (Dkt. No. 74 at 7–8), claims-
 26 processing rules are mandatory when properly raised and not forfeited. *See Alam*, 960 F.3d at
 833. Here, the Government properly raised the exhaustion requirement. (Dkt. No. 84 at 7–9.)

1 under seal. (Dkt. Nos. 75, 85.) Mr. Hickles also moves to maintain his institutional records under
2 seal. (Dkt. No. 75.) “There is a strong presumption of public access to the court’s files.” W.D.
3 Wash. Local Civ. R. 5(g). To overcome that presumption, a party must show “good cause” for
4 sealing a document attached to a non-dispositive motion and “compelling reasons” to seal a
5 document attached to a dispositive motion. *See Kamakana v. City and Cnty. of Honolulu*, 447
6 F.3d 1172, 1178-81 (9th Cir. 2006). The Court need not decide whether Mr. Hickles’s motion for
7 compassionate release is a dispositive motion. The Court FINDS that Mr. Hickles has a
8 compelling interest in maintaining his medical records (Dkt. Nos. 76, 86) under seal and that
9 interest outweighs the public’s interest in their disclosure. *See Karpenski v. Am. Gen. Life Cos.*,
10 *LLC*, 2013 WL 5588312, slip. op. at 1 (W.D. Wash. 2013). However, Mr. Hickles’s motion (Dkt.
11 No. 75) does not demonstrate either good cause or compelling reasons to maintain his
12 “institutional records” (Dkt. No. 76-1) under seal.

13 Additionally, Mr. Hickles moves to file a motion for compassionate release up to 26
14 pages in length, and the Government moves to file a 15-page response. (Dkt. Nos. 83, 87). The
15 Court FINDS that a motion and a response brief of these respective lengths are reasonable in
16 light of these circumstances and GRANTS the motions.

17 **III. CONCLUSION**

18 For the foregoing reasons, the Court DENIES Mr. Hickles’s motion for compassionate
19 release (Dkt. No. 74), GRANTS in part and DENIES in part Mr. Hickles’s motion to seal (Dkt.
20 No. 75), GRANTS the Government’s motion to file an overlength brief (Dkt. No. 83), GRANTS
21 the Government’s motion to seal (Dkt. No. 85), and GRANTS Mr. Hickles’s motion to file an
22 overlength brief (Dkt. No. 87). The Clerk is DIRECTED to maintain Docket Numbers 76 and 86
23 under seal until further order of the Court and to unseal Docket Number 76-1.

24 //

25 //

26 //

1 DATED this 14th day of January 2021.

2
3
4 

5 John C. Coughenour
6 UNITED STATES DISTRICT JUDGE
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26